IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16608 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGDISH @ GHUGHO KHUSHALBHAI SUVADIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16608 of 2003

MR PREMAL S RACHH for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under under Article 226 of the Constitution of India for

appropriate writ, order or direction for quashing and setting aside an order dated 27.10.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that five criminal cases for offences punishable under section 454, 457, 380, 511 and 114 of IPC have been registered against the petitioner before Katargam police station as CR No.261/2003, 262/2003, 264/2003 and 265/2003 on 27/28.7.03,26/27.7.03, 27.7.03, 30.7.03, and 24/25.1.03, respectively. It was alleged against the petitioner that he was involved in the commission of offence of theft in respect of certain moveable items mentioned at page 16.

3. It was also alleged against the petitioner that two statements have been given by two different witnesses saying that the petitioner was a dangerous person.

4. On the strength of the above registered offence and unregistered cases, a detention order was passed against the petitioner. Feeling aggrieved by the order of detention, the petitioner has approached this court for quashing and setting aside the said order of detention. It has been contended here in this petition that the petitioner was simply involved in certain IPC offences, it cannot be said that the petitioner was a dangerous person and hence he was required to be detained. That no proper verification about the correctness and genuineness of the statements has been done and therefore also the order of detention stands vitiated. It is therefore, prayed that the petition be allowed and the order of detention be quashed and set aside.

5. On receipt of the petition, rule was issued and in response to service of notice of rule, Ms. Mita Panchal, learned AGP has appeared on behalf of the respondents. I have heard the learned Advocates for the parties and have perused the papers on record.

6. It is not much in dispute that five offences and unregistered cases stated hereinabove are pending against the petitioner. It can be gathered that these are the stray individual offences against certain moveable items as stated in the grounds of detention. It would, therefore, be difficult to agree with the detaining authority that the above activities of the petitioner would lead to a threat to public order. Therefore, the

order of detention cannot be sustained on this ground. With respect to the statements of two witnesses, their names have not be disclosed and, therefore, the petitioner could not effectively submit his representation.

7. The detaining authority has claimed power of privilege under section 9(2) of the Act. As decided by this Court (Coram: Hon'ble Mr Justice A L Dave) in Special Civil Application No.294/2000 passed on 19.4.2000 wherein it has been clearly laid down that before claiming privilege under section 9(2) of the Act, the detaining authority must have credible material before it in order to ascertain reasonable fear or apprehension in the mind of the witnesses whose names have not been disclosed to the detenu. It has also been observed that if there is no credible material before the detaining authority, even non-disclosure of the names of the witnesses would violate principles of natural justice and the petitioner is deprived of his right to effectively represent his defence guaranteed under Article 22 (5) of the Constitution of India. Therefore, even on this ground also the order of detention fails. Consequently, the order of detention cannot be sustained in the eye of law and therefore, it is required to be quashed and set aside.

8. For the foregoing reasons, this petition is allowed. The impugned order dated 27.10.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp